THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.21483 of 2006

ORDER :

This Court issued Rule Nisi on 18-10-2006 and directed the status-quo to be maintained until further orders in W.P.M.P.No.27243 of 2006. W.V.M.P.No.2452 of 2006 is filed to vacate the interim order.

Heard the counsel on record.

The Writ Petition is filed praying for a Writ of *Mandamus* declaring the action of the respondents in issuing notice dated 20-09-2006 for establishing another Fair Price Shop in Pallipalem hamlet contrary to the guidelines issuing by the State Government vide memo dated 22-01-1999 as arbitrary and illegal and violative of Articles 14 and 19(1)(g) of the Constitution of India and to direct the respondents to refrain from granting license to another F.P.Shop in Antharvedi Pallipalem, Sakinetipalli Mandal, East Godavari District by strictly following the Government Memo dated 22-01-1999 and pass such other orders.

It is stated that Antharvedi Pallipalem is a small hamlet of Sakinetipalli Mandal in East Godavari District and population of Pallipalem hamlet is around 1500. A fair price shop licence was granted to a dealer, since regular dealer had not been maintaining the stocks properly and he was not submitting the demand drafts for the release of essential commodities. In the circumstances, the Priyanka DWACRA Group, Pallipalem had submitted a representation to the respondents to allot the existing Fair Price Shop dealership in its favour. It is further stated that petitioner is the President of Priyanka DWACRA Group and DWACRA group is an organization of women interested in self-help

belonging to Pallipalem hamlet. It is further stated that the respondents herein had been pleased to consider the application submitted by Priyanka DWACRA Group and allotted the dealership of F.P.Shop No.13 of Pallipalem Hamlet in favour of Priyanka DWACRA Group vide proceedings dated 16-03-2002. It is further stated that since then the Priyanka DWACRA Group has been running F.P. shop of Pallipalem without any complaints. It is further stated that there are 664 ration cards sanctioned to the F.P. shop run by the Priyanka DWACRA Group and other members have been successfully managing the F.P. Shop without any complaints from any quarter.

It is further stated that the entire village is within less than 500 meters radius and the F.P. shop in Pallipalem hamlet is run by the Priyanka DWACRA Group. The Priyanka DWACRA Group is running the F.P. shop on economically viable lines and the income so generated from the F.P. shop is being shared by the women members of the DWACRA Group. It is further stated that while matters stood thus, third respondent had issued a notice on 20-09-2006 calling for application from the eligible candidates for opining another F.P. shop in Pallipalem hamlet. The third respondent is intending to bifurcate the Pallipalem hamlet by allowing one more F.P. shop in Pallipalem hamlet. It is further stated that the said notification had been communicated to the Gram Panchayat for due publicity. It is further stated that the last date for receiving the applications had been fixed as 09-10-2006. The Gram Panchayat had passed a resolution on 06-10-2006 and requested the District Collector not to bifurcate the F.P. shop in Pallipalem hamlet, as it would be economically unviable and unhealthy competition would develop in small pallipalem hamlet. It is further averred that comprehensive

guidelines had been issued by the State Government vide Memo Dated 22-01-1999, wherein as per the guidelines each and every village should have a separate F.P. shop and the F.P. shop should be within a distance of 1 KM from the residence of the cardholders and the memo specifically states that new shops should not be opened including bifurcating of the shop in order to ensure that there won't be any unhealthy trend and economical viability of the shops should be taken care of. In that regard in rural areas no new F.P. shops should be sanctioned if the number of cards attached to the F.P. shop are less than 350.

It is further stated that as per the guidelines, in the shop run by the petitioner there are 664 cards and the entire card holders are within radius of 500 mtrs. from the F.P. shop. As per the guidelines there should be a distance of 1 Km. from the residence of the cardholders to the shop. If another F.P. shop is allowed in Pallipalem hamlet the F.P. shop run by the petitioner would become economically unviable and an unhealthy trend would develop thereby defeating the purpose of granting license of F.P. shop at Pallipalem hamlet. Petitioner had filed W.P.No.22727 of 2004 before this Court when the respondents had been intending to open another F.P. shop in Pallipalem hamlet. This Court had been pleased to dispose of the Writ Petition on 09-12-2004 directing the respondents to take into account the guidelines contained in Government memo dated 22-01-1999 in case the F.P. shop, for which the petitioner is dealer, is bifurcated. Contrary to the guidelines the respondents are once again taking steps to bifurcate the F.P. shop at Pallipalem hamlet against the interest of the existing F.P. shop run by the petitioner and if the F.P. shop is bifurcated, she would be put to irreparable loss and hardship and the entire women of the DWACRA Group would be put to irreparable loss and hardship and the F.P.

shop run by the DWACRA Group would become economically unviable and unhealthy trend would arise. It is further stated that the balance of convenience lies in favour of the petitioner as the Priyanka DWACRA Group is running F.P. Shop of Pallipalem hamlet from the past 4 years and there are only 664 ration cards. If at all there are 700 ration cards, then the respondents are justified in opening another F.P. shop. The entire radius of Pallipalem village is 500 mtrs. and ration cardholders residences are within 500 mtrs. from the F.P. shop rub by her.

In the above circumstances, the writ petitioner approached this Court praying for appropriate reliefs.

The Government Memo dated 22-01-1999 reads as hereunder:

"GOVERNMENT OF ANDHRA PRADESH
FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS
(CS.I)
DEPARTMENT

Dept. Memo No.148/CS.I/98-1,
Dated:22.1.1999

Sub: Civil Supplies – P.D.S. – Guidelines for Opening of new Fair Price Shops – Revised instructions issued –Reg.

Ref: 1.Govt. Memo No.8181/CS.II/88-1 P & A Dept., Dt.05-02-1988.
2. Govt. Memo No.40829/CS.IV-1/91-1 F & A Dept. of New Dt. 26-07-1991 used instructions – Communicated.

In the reference 1st cited, though the powers of sanctioning of new F.P. Shop were delegated to the Chief Rationing Officer, A.P., Hyderabad, in respect of twin cities of Hyderabad and Secunderabad and to Collectors in respect of other than places, it is

observed that in some districts the powers of sanctioning of new F.P. shops are being exercised by other officials viz., Revenue Divisional Officers etc., which is a deviation of the Govt. instructions issued in the reference 1st cited. The following instructions are therefore, communicated for strict compliance.

In the reference 2nd cited, the following guidelines in the matter of opening new Fair Price shops were issued.

i) Each and every village should have a separate F.P. Shop.

ii) F.P. Shops should be within a distance of one KM from the residences of cardholders.

iii) Whether there is need for a separate shop to cover Harijan Basti in the village.

iv) In tribal areas, F.P. shops may be created even for 1000 population.

v) In non-tribal areas, F.P. shop may be opened for every 1650 population.

vi) The shops must be economically viable.

It is observed that in spite of specific guideline that the shops must be economically viable, recently, in some districts, new F.P. Shops are being opened even for a few cards rendering both the new shop and also the bifurcated shop, economically unviable, in obviate this unhealthy trend, the following additional guidelines are issued.

i) In rural areas no new F. P. shop should be sanctioned if the number of cards to be attached to the F.P. shop is less than 350,

ii) In urban areas no new F. P. shop shall be sanctioned if the number of cards to be attached to the shop is less than 500.

iii) In city areas no new F.P. shop shall be sanctioned if the number of cards to be attached to the shop is less than 800.

If, for special reasons like dissidence or faction in a village or certain social tensions between one community and another due to caste or religious conflicts, the Collectors may if they are fully satisfied for splitting the shops for the benefit of the community, may do not giving reasons for such sanction of new shops.

Similarly, where the total number of cards in a village is less than 350, shop may be continued/sanctioned. Attaching of cards of one village to a shop in another village should be avoided.

The above guidelines shall apply even to the existing F.P. shops. The District Collectors and Chief Rationing Officer, Hyderabad are acquainted to review the position and re-organise the F.P. Shops.

Sd/- H.S.BRAHMA,
Ex-Officio Secretary to Government."

In W.V.M.P. No.2452 of 2006 filed by the respondents it is stated that the writ petition is not maintainable. Further it is averred that Sri Kollati Narasimhaswamy, Sarpanch, Pallipalem, Sakhinetipalli Mandal submitted a representation dated 06-11-2004 to the third respondent through the Hon'ble M.L.A., Razole, stating that there are 800 families living in Pallipalem village, that all of them belong to fishermen community and their main occupation is fishing. But, only one F.P. shop is existing for the entire village and the villagers are experiencing much difficulty to draw their commodities every month from the F.P. shop, as more number of cards are tagged on to the F.P. shop. The

Sarpanch requested to bifurcate the existing F.P. Shop No.13 of Pallipalem and to arrange a new F.P. shop in the village in order to avoid inconvenience to the card holders, which had a genuine reason for the benefit of the villagers. The representation of the Sarpanch, Pallipalem had been sent to the Mandal Revenue Officer, Sakhinetipalli vide Ref:H/3104/2004, dated 09-11-2004 to enquire into the matter and submit proposals keeping in view the guidelines issuing by the Government in Govt. Memo No.148/CS.I/98-I, dated 22-01-1999 of Food, Civil Supplies & Consumer Affairs (CS.I) Department.

It is further averred that the Mandal Revenue Officer, Sakhinetipalli vide Ref:B/182/2004, dated 14-12-2004 reported that 700 ration cards are tagged on to the F.P. Shop No.13 of Pallipalem and the details of the cards existing are as follows:

White Cards	609
A.A.Y.Cards	34
Pink Cards	57
Total	700

The Mandal Revenue Officer, Sakhinetipalli further reported that only one F.P. Shop is existing in Pallipalem village and there are 10 wards in the village. The F.P. shop is located in the village within a radius of 3 Kms. and the cardholders are experiencing much difficulty to get their essential commodities from long distance and presently Priyanka Dwacra Group is working as F.P. shop dealer. The Mandal Revenue Officer, Sakhinetipally, proposed to bifurcate the existing F.P. Shop No.13 of Pallipalem as follows:

Area of the F.P.Shop	No. of cards proposed to tagged on to the F.P. Shop				Allotment of commodities		
	White	A.A.Y.	Pink	Total	Rice	Sugar	K.Oil
1st to part of 4th ward	304	17	29	350	46.79 qtls.,	3.21 qtls.,	1050 ltrs.,
Part of 4th ward to 10th ward	305	17	28	350	46.47 qtls.,	3.22 qtls.,	1050 ltrs.,
TOTAL	609	34	57	700	93.26 qtls.	6.55 qtls.,	2100 ltrs.,

It is further stated that the Mandal Revenue Officer, Sakhinetipalli, finally recommended to bifurcate the F.P. shop No.13 of Pallipalem as proposed above, to avoid inconvenience to the cardholders and also for proper distribution of the essential commodities. The Government in Govt. Memo No.148/Cs.I/98-1, dated 22-01-1999 of Food, Civil Supplies & Consumer Affairs (Cs.I) Department issued guidelines to sanction a new F.P. Shop in rural areas, if the number of cards to be attached to the F.P. shop is not less than 350.

It is further stated that Smt.Tirumani Leela Sundari (Priyanka Dwacra Group), F.P. Shop dealer No.13 of Pallipalem had earlier filed a Writ Petition No.22727 of 2004 in this Court stating that the respondents i.e., the Collector (C.S.) East Godavari, Kakinada and the Revenue Divisional Officer, Amalapuram, are taking steps to bifurcate the fair price shop, at the instance of local politicians and in such an event, the shop would become economically unviable and

this Court at the stage of admission disposed of the writ petition directing that the respondents shall take into account the guidelines contained in Government Memo Dated 22-01-1999 in case the fair price shop for which the petitioner is dealer is bifurcated. In this case it is proposed to tag on 350 cards each to both the new shop and also the bifurcated shop.

It is further stated that in view of the guidelines issued by the Government dated 22-01-1999 proposals had been submitted to the second respondent by the third respondent vide Ref:H/3104/04, dated 14-02-2005 and recommended to issue necessary orders for bifurcation of the F.P. Shop No.13 of Pallipalem as proposed by the Mandal Revenue Officer, Sakhinetipalli for the convenience of the villagers of Pallipalem. The second respondent vide proceedings Ref:V9/CS/152/2005, dated 20-04-2005 issued orders for bifurcation into two F.P. Shops i.e., 13 and 13-A as proposed. Aggrieved by the same, the petitioner had filed an appeal before the Director of Civil Supplies, A.P., Hyderabad and the Director of Civil Supplies vide Appeal No.N1/10578/05, dated 25-02-2006 dismissed the appeal as withdrawn. Later, the third respondent had issued a notification vide Ref:H/3104/2004, dated 19-09-2006 inviting applications from the candidates belonging to Backward Classes to fill the dealership of F.P. Shop No.13-A, Pallipalem Village, which had been bifurcated from the existing F.P. Shop. The following candidates had submitted their applications for the dealership:

Sl. No.	Village	Name of the Candidate	Caste
1.	Pallipalem	Pinapothu Jyotsna D / o Narasimha Raju	Agnikula Kshatriya
2.	Pallipalem	Pinapothu Rambabu, S/o Venkanna	Agnikula Kshatriya
3.	Pallipalem	Pinapothu Manga, W/o Satyanarayana	Agnikula Kshatriya

It is further stated that the third respondent had conducted interview on 16-10-2006 and Smt.Pinapothu Manga, W/o Satyanarayana, resident of Pallipalem village, Sakhinetipalli Mandal was appointed as dealer to the F.P. Shop No.13-A at Pallipalem and issued orders vide D.Dis:H/3104/2004, dated 18-10-2006. At that juncture, the petitioner had approached this Court and this Court granted interim orders dated 18-10-2006 in W.P.M.P.No.27243 of 2006 in W.P.No.21483 of 2006 to maintain status quo as on 18-10-2006 until further orders. Accordingly, the petitioner is being continued as Dealer to F.P. shop No.13, Pallipalem.

In reply to the averments made in para 2 of the affidavit filed in support of the writ petition, it is stated that it is a fact that the DWACRA group is an organization of women interested in self-help groups, but at the same time the petitioner had ignored the difficulties being faced by the consumers while drawing their commodities every month from all corners in the village which is around 3 kms. It is further stated that Pallipalem village of Sakhinetipalli Mandal

is a separate Gram Panchayat having a population of 3200, consisting of 10 wards and 700 ration cards are existing in the F.P. Shop No.13, Pallipalem, but not 664 ration cards as contended by the petitioner.

In reply to the averments made in paras 3 to 5 of the affidavit filed in support of the writ petition, it is stated that the petitioner has contended that the Gram Panchayat has passed resolution dated 06-10-2006 not to bifurcate the F.P. shop in Pallipalem village. In that regard, it is submitted that the bifurcation was already made and orders were issued by the second respondent in the year 2005 i.e., prior to passing resolution, but at that time the matter was pending before the Director of Civil Supplies, A.P., Hyderabad, in an appeal which had been filed by the present petitioner. The said appeals had been withdrawn on 25-02-2006 by the petitioner. The notification had been issued calling applications from the eligible candidates for appointment of F.P. shop dealer after following the necessary process. There is no illegality in that regard. It is further stated that the Mandal Revenue Officer, Sakhinetipalli vide his letter dated 14-12-2004 had reported that the present F.P. shop in Pallipalem village is located in the village within a radius of 3 Kms. Hence, the contention of the petitioner that the entire village is located within less than 500 metres radius is not true and is incorrect. It is further stated that the F.P. shop had been bifurcated according to the guidelines issued by the Government vide Memo.No.148/CS.I/98-1, dated 22-01-1999. It is a

recognized principle that in a welfare state the interest of a few individuals should yield to the interest of a many in the society and hence, the action of the respondents is legal, valid and in accordance with the guidelines issued by the Government in Memo dated 22-01-1999 in bifurcating the F.P. shop.

Further it is stated that the Mandal Revenue Officer, Sakhinetipalli vide Ref:B/1/2006, dated 10-11-2006 had submitted a report to the third respondent stating that the petitioner had filed a representation on 09-11-2006 stating that she filed a writ petition before this Court vide W.P.No.21483 of 2005, that now she had no objection to bifurcate the F.P. Shop No.13, Pallipalem into two shops in the interest of the cardholders. The Mandal Revenue Officer, Sakhinetipalli, further reported that the matter had been got enquired by the Civil Supplies Deputy Tahsildar, Sakhinetipalli and he had also recorded a statement from the petitioner in which she stated that she had no objection for the bifurcation of the F.P. Shop No.13, Pallipalem and she is ready to withdraw the Writ Petition filed before this Court.

In the light of the respective stands taken by the parties, this Court is satisfied that the impugned action is not violative of any of the guidelines or circulars. Even otherwise, in matters of this nature the Writ Court to be slow in interfering in such decisions taken by the concerned authorities keeping in view the public interest. In the light of the same, the Writ Petition being devoid of merit, the same

shall stand dismissed. No costs.

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P.S.NARAYANA, J.

12th December, 2007.

Note: L.R. copy to be marked.

B/O

skmr

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 21483 of 2006

Dated: 29th November, 2007

BETWEEN:

Priyanka DWACRA Group,
Antharvedi Pallipalem,
represented by its President
Smt.Tirumani Leela Sundari,
W/o Babaiah, aged 55 years,
Antharvedi Pallipalem, Sakinetipalli Mandal,
East Godavari District

.. Petitioner

And

The State of Andhra Pradesh,
represented by its Secretary,
Civil Supplies Department,
Secretariat, Hyderabad and others

.. Respondents

*** T H E H O N ' B L E S R I J U**

+ **W.P.No. 21483 of 2006**

% 12-12-2007

Priyanka DWACRA Gr
Antharvedi Pallipalem
represented by its Pr
Smt.Tirumani Leela S
W/o Babaiah, aged 55
Antharvedi Pallipalem
Sakinetipalli Mandal,
East Godavari Distric

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Vs.

$ The State of Andhra Pradesh,
represented by its Secretary,
Civil Supplies Department,
Secretariat, Hyderabad and others

. . Resp

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> HEAD NOTE :

! Counsel for Sri Abhinaed Kumar on
Shavili

^ Counsel for respond
Supplies

? CASES REFERRED :-

NIL